

ORDINANCE OF THE HOOPA VALLEY TRIBE  
HOOPA INDIAN RESERVATION  
HOOPA, CALIFORNIA

ORDINANCE NO: 11-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL COMMERCIAL TRANSACTIONS CODE, TITLE 57 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Part IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has established the promotion of business development and job creation as major goals for the Tribe and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Commercial Transactions Code as Title 57 of the Hoopa Tribal Code.

TITLE 57 -- COMMERCIAL TRANSACTIONS CODE

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## TRIBAL COMMERCIAL TRANSACTIONS CODE

### GENERAL PROVISIONS

#### PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT.

##### 57.1.101. Short Title.

This Title shall be known and may be cited as the Tribal Commercial Transactions Code. Each Part of this Title (except this Part) may also be cited by its own short title.

##### 57.1.102. Scope.

This Part, and all subsequent Parts and Sections of this Title, shall apply to the over-all processes and procedures for engaging in commercial activities which are under the jurisdiction of Tribe.

##### 57.1.103. Purposes; Rules of Construction.

(1) Underlying purposes and policies of this Title are:

(a) to simplify, and clarify the law governing commercial transactions within Indian Country; and

(b) to promote the continued expansion of commercial practices within Indian Country.

(2) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

##### 57.1.104. Supplementary General Principles of Law.

Unless specifically modified or deleted by a particular provision of this Title or other recognized and applicable law, the principles of law and equity, including those relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating legal concept may supplement this title, where such provisions are not inconsistent with the Tribal

Comprehensive Business Codes. The adoption of this Code does not preempt any applicable consumer protection laws.

##### 57.1.105. Construction Against Implicit Repeal.

No part of this Title shall be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

#### 57.1.106. Territorial Application of the Title.

Except as provided elsewhere in this Title, this Title applies to all commercial transactions which are under the jurisdiction of the Tribe.

#### 57.1.107. Remedies to Be Liberally Administered.

(1) The remedies provided by this Title shall be liberally administered so that the aggrieved party may be put in the same position as if the other party had fully performed. Consequential, special or punitive damages may not be had unless specifically provided for in this Title or in other applicable law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect.

#### 57.1.108. Waiver or Renunciation of Claim or Right After Breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

#### 57.1.109. Severability.

If the application of any provision or clause of this Title is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Title, if the

remaining provisions can still be given effect without the invalid provisions or application.

#### 57.1.110. Special Limitation on Application of Code.

Notwithstanding any other provision of this Title to the contrary, this Title shall not apply to any exclusively barter transaction in which the market value of all the goods and services involved in

the transaction does not exceed \$5,000.00. Such transactions shall be governed by the customs and traditions of the Tribe or other applicable process.

#### 57.1.111. Administration of the Commercial Transactions; Regulations.

The Tribal Department of Commerce, or its designated successor, shall be charged with the administration of this Title. The Department of Commerce or its designated successor is authorized to

promulgate upon review and approval of the Tribal Council, regulations and revisions regarding those matters designated to be governed by this Title.

### PART 2. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 57.1.201. General Definitions.

(1) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(2) "Accord and Satisfaction" means the discharge of a debt where the parties agree to exchange money or an item of value as a full and complete payment of the debt. The amount of money or value of the item exchanged does not need to equal the debt which is being discharged.

(3) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in

equity and any other proceedings in which rights are determined.

(4) "Aggrieved party" means a party entitled to resort to a remedy.

(5) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade or course of performance as provided in this Title. Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by recognized contract principle.

(6) "Attach" means the ability to enforce a claim against a debtor with respect to collateral.

(7) "Bank" means any person or institution that receives deposits, makes loans, or performs other money-related functions.

(8) "Barter" means to exchange goods or services without exchanging money.

(9) "Bearer form" means a security or similar commercial paper that is not registered on the books of the issuer. Such a security or paper is payable to the person having possession of the paper.

(10) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

(11) "Branch" means any division or separate facility of an organization or business entity and includes a separately incorporated foreign branch of a bank.

(12) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its non-existence.

(13) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale is in violation of the ownership rights or security interest of a third party in the goods, buys in the regular business practice from a person in the business of selling goods of that kind. This definition does not extend to pawnbrokers. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash, secured or unsecured credit, contract for sale, exchange of other property. Transfers in bulk or as security for or in total or partial satisfaction of a money debt do not constitute buying.

(14) "Cash Proceeds" means money, checks, deposit accounts and the like.

(15) "Certificated security" means a recognized interest in property, an enterprise or an obligation of the issuer which is:

(a) represented by an instrument issued in bearer or registered form;

(b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(c) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(16) "Chattel paper" means a written instrument which evidence both a monetary obligation and a security interest in, or a lease of specific goods. A charter or other contract involving the use or hire of a vessel is not chattel paper.

(17) "Check" means a draft, other than a document draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An item may be a check even though it is described on its face by another term, such as "money order."

(18) "Collateral" means property subject to a security interest, and includes accounts and chattel paper which have been sold.

(19) "Consequential Damages" means any indirect losses or injuries which are not the direct result from an action or failure to act. See also Special Damages and Punitive Damages.

(20) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (such as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger type or contrasting type or color. In a telegram any stated term is "conspicuous."

(21) "Consignee" is the person receiving goods to sale in accordance with the terms of an agreement with the consignor.

(22) "Consignment" is the act of placing goods with another for sale with the understanding that the consignee will pay the consignor for any goods sold and will return any unsold goods.

(23) "Consignor" is the person giving the goods to a consignee to sale.

(24) "Construction Mortgage" means a mortgage that secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(25) "Consumer" means any real person.

(26) "Consumer Goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(27) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other recognized and applicable rules of law.

(28) "Contract for Sale" means an agreement for both the present sale of goods and a contract to sell goods at a future time.

(29) "Course of performance" means the understanding which develops by conduct without objection between two parties during the performance of a contract.

(30) "Creditor" means a person or organization to whom a debt is owed and includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

- "Days" means calendar days.

(32) "Debtor" means the person who owes payment or other performance of the obligation, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

- (33) "Defendant" means a person or organization against whom a legal action is brought and includes a person in the position of defendant in a cross-action or counterclaim.
- (34) "Delivery" means the voluntary transfer of possession with respect to instruments, documents of title, chattel paper or certificated securities.
- (35) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to person in possession of the goods and purport to cover goods in the person's possession.
- (36) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- (37) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary.
- (38) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- (39) "Equipment" means goods which are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.
- (40) "Farm Products" means goods which are crops, livestock, supplies used or produced in farming operations, or are products or crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations. If goods are farm products they are neither equipment nor inventory.
- (41) "Fault" means wrongful act, omission or breach.
- (42) "Financing statement" means a document setting out a secured party's security interest the collateral. A financing statement includes the original financing statement and any amendments.
- (43) "Fixture" means goods when they become so related to particular real estate that an interest in them arises under real estate law.
- (44) "General Damages" means damages which are usual and customary in the type of transaction at issue. They may be pled in broad terms which provides sufficient information to the opposing party as to the nature of the damages.
- (45) "General Intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money.
- (46) "Genuine" means free of forgery or counterfeiting.
- (47) "Good faith" means honesty in fact in the conduct or transaction concerned.
- (48) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures and includes "Consumer goods", "Equipment", "Farm products", and "Inventory" but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or natural

resources (minerals or the like including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(49) "Holder" with respect to a negotiable instrument payable to the bearer, means the person in possession of the instrument, in the case of an instrument payable to an identified person, if the identified person is in possession, with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(50) "Holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear apparent evidence of forgery, alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment or another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument; and

(vi) without notice that any party has a defense or claim in recoupment.

(51) "Honor" means to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(52) "Indian country" as defined by 18 U.S.C Sec. 1151 means:

(a) land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) all dependent Indian communities with the borders of the United States whether the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of way running through the same.

(53) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(54) "Insolvent" means a person or organization who either has ceased to pay their debts in the ordinary course of business or cannot pay their debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(55) "Instrument" means a negotiable instrument or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property.

(56) "Inventory" means goods which are held by a person who holds them for sale or lease or to be furnished under contracts or service or if the person has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as equipment.

(57) "Investment Property" means a security, whether certificated or uncertificated, a security entitlement, a securities account, a commodity contract, or a commodity account.

(58) "Lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(59) "Money" means a medium of exchange authorized or adopted by a sovereign entity and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(60) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(61) "Notifies" means a person or organization taking such steps as may be reasonably required to inform another in ordinary course, independent of whether or not such other actually comes to know of it.

(62) "Organization" includes a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(63) "Party", means a person who has engaged in a transaction or made an agreement within the scope of this Title.

(64) "Payment intangible" means a general intangible under which the account debtor's principal obligation is to pay money.

(65) "Punitive Damages" means damages which are not related to the actual injury or harm suffered but which are awarded as a deterrent to keep a particularly malicious or willful act from happening again.

(66) "Person" an individual.

(67) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(68) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".



(69) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(70) "Purchase money security interest" means a security interest that is:

(a) taken or retained by the seller in the collateral to secure all or part of its price; or

(b) taken by a person who (by making advances to incurring an obligation) gives value to enable the debtor to acquire rights in or the use of collateral, if such value is in fact so used.

(71) "Purchaser" means a person who takes by purchase.

(72) "Pursuant to commitment" means that the secured party is bound to make an advance, whether or not a subsequent event of default, or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(73) "Reasonable time" means any time which is not manifestly unreasonable. Determination depends on the nature, purpose and circumstance of such action and may be fixed by agreement.

(74) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(75) "Representative" means any person empowered to act for another and includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(76) "Sale" means the passing of title or interest from the seller to the buyer for a price.

(77) "Security" means property that has been designated as financial backing for a loan or other obligation. It is either certificated or un-certificated security. If a security is certificated, the terms security and certificated security may mean either intangible interest, the instrument representing that interest, or both, as the context requires.

(78) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest".

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee: and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease

agreement.

A transaction does not create a security interest merely because it provides that:

- (a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;
- (c) the lessee has an option to renew the lease or to become the owner of the goods;
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time option is to be performed; or
- (e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

- (a) Additional consideration is not nominal if:
  - (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
  - (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
- (b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
- (c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(79) "Send" means to properly address and deposit in the mail or deliver for transmission by any other recognized and acceptable means of communication, with postage or cost of transmission provided for.

(80) "Sign" means to identify a document or record by means of a signature, mark, or other symbol with intent to authenticate the writing.

(81) "Special Damages" means damages which are unique to the course of conduct between the parties and which must be specifically enumerated in order to provide the opposing party with the necessary information to inform them of the damages.

(82) "Standard trade practices" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(83) "Surety" includes guarantor.

(84) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(85) "Term" means that portion of an agreement which relates to a particular matter.

(86) "Trade fixture" means property placed on or within real estate for the purpose of conducting a trade or business. Trade fixtures are presumed not to become annexed to the real estate.

(87) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(88) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(89) "Usage of trade" means the prevailing and accepted customs within a particular trade or industry with preference being given to customs within the jurisdiction of the Tribe.

(90) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections a person gives "value" for rights if the person acquires them:

- (a) generally, in return for any consideration sufficient to support a simple contract;
- (b) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
- (c) as security for or in total or partial satisfaction of a pre-existing claim; or
- (d) by accepting delivery pursuant to a pre-existing contract for purchase.

(91) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(92) "Written" or "writing" means any printed, typewritten or other form of communication reduced to tangible form.

#### 57.1.202. Prima Facie Evidence by Third Party Documents.

A document purporting to be: a bill of lading; policy or certificate of insurance; official weigher's or inspector's certificate; consular invoice; or any other document authorized or required by contract, to be issued, shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document.

#### 57.1.203. Obligation of Good Faith.

Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement.

#### 57.1.204. Notice.

(1) The time and circumstances under which a notice or notification may cease to be effective are determined by the nature, purpose, and circumstances of the transaction.

(2) Notice, knowledge or notification received by an organization is effective for a particular transaction:

(a) from the time when it is brought to the attention of the individual conducting that transaction; or

(b) from the time when it would have been brought to that person's attention if the organization had exercised due diligence.

#### 57.1.205. Course of Dealing and Usage of Trade.

(1) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged, or of which they are or should be aware may be considered for purposes of:

(a) determining the meaning of ambiguous terms in an agreement; or

(b) supplementing or qualifying the terms of an agreement.

(2) The express terms of an agreement and standard trade practices shall be construed, wherever reasonable as consistent with each other. When such construction is unreasonable:

(a) Express terms control standard trade practices; and

(b) Past trade practices control usage of trade.

(3) The standard trade practices in the place where any part of performance is to occur may be used in interpreting the agreement relating to that part of the performance.

(4) Evidence offered by one party relating to standard trade practices is not admissible unless and until sufficient notice has been given to the other party.

#### 57.1.206. Performance or Acceptance Under Reservation of Rights.

(1) A party who performs or promises performance in a manner demanded, or proposed by the other party, does not waive any rights, provided the party explicitly reserves those rights. Such words as "without prejudice", "under protest" or the like are sufficient to reserve those rights.

(2) Subsection (1) does not apply to an accord and satisfaction.

#### 57.1.207. Option to Accelerate at Will.

(1) A term providing that one party or the parties successor in interest may accelerate payment, performance, require collateral or require additional collateral "at will", "when insecure" or words of similar import shall only be effective upon a good faith belief that the prospect of payment or performance is impaired.

(2) Any party or the party's successor in interest desiring to accelerate payment, performance, require collateral or require additional collateral must obtain leave of the court, unless the debtor agrees to the terms of the acceleration at the time the option is exercised.

(3) A judicial decree under Section 57.2.608 allowing a secured party to repossess collateral shall include an order of acceleration if the secured party has made such a request in the pleadings.

(4) The burden of establishing lack of good faith initially is on the party against whom the power has been exercised. Upon presentation of prima facie evidence of lack of good faith, the burden of proof shifts to the party exercising the power. The party exercising the power must present a commercially reasonable justification beyond a reasonable doubt for the exercise of the power.

#### 57.1.208. Subordinated Obligations.

An obligation may be designated as subordinate to payment of another obligation of the debtor, or a creditor may subordinate the creditors right to payment of an obligation by agreement with either the debtor or another creditor of the debtor. Such a subordination does not create a security interest as against either the debtor or a subordinated creditor.

#### 57.1.209. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

Except in the cases described in 57.1.110, a contract for the sale or personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000.00) in amount or value or remedy unless there is a writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party, or the parties authorized agent, the against whom enforcement is sought.

### SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

#### PART 1. GENERAL PROVISIONS.

##### Sub-Part 1. Short Title.

##### 57.2.101. Short Title.

This Part may be cited as Commercial Transactions--Secured Transactions.

##### Sub-Part 2. Concepts.

##### 57.2.102. Control Over Investment Property.

(1) Control of a certificated security in bearer form is effective when the security is delivered to

the purchaser.

(2) Control of a certificated security in registered form is effective when the security is delivered to the purchaser, and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) Control of an un-certificated security is effective if:

(a) the un-certificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with the instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has control of a security entitlement if:

(a) the purchaser becomes the entitlement holder; or

(b) the securities intermediary has agreed that it will comply with entitlement order originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the security intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner or the entitlement holder retains the right to:

(a) make substitutions of the uncertificated security or security entitlement;

(b) originate instructions or entitlement orders to the issuer or securities intermediary; or

(c) otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in 57.2.102(3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(8) (a) A secured party has control over a commodity contract if the commodity customer, the commodity intermediary, and the secured party agree that the commodity intermediary will apply any value distributed under the commodity contract as directed by the secured party without consent by the commodity customer.

(b) If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary has control as a secured party.

### Sub-Part 3. Applicability of Part.

#### 57.2.103. Sufficiency of Description.

(1) Except as otherwise provided in 57.2.103(2), a description of personal property or real estate is sufficient if it reasonably identifies what is described.

(2) A description of a deposit account is sufficient only if it describes the deposit account either by item; as all of the debtor's deposit accounts; or as an identified class of the debtor's deposit accounts.

(3) (a) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, un-certificated security, security entitlement, securities account, commodity contract, or commodity account:

(i) if it describes the collateral by those terms;

(ii) as investment property; or

(iii) by description of the underlying security, financial asset, or commodity contract.

(b) A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

#### 57.2.104. Policy and Scope of Part.

(1) Except as otherwise provided in Section 57.2.105 on excluded transactions, this Part applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account or chattel paper; and

(d) a consignment.

(2) The application of this Part to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by transaction or interest to which this Part does not apply.

#### 57.2.105. Transactions Excluded from Part.

(1) Except as provided in 57.2.105(2), this Part does not apply to:

(a) a security interest subject to any federal statute, regulation or applicable treaty, to the extent that such statute, regulation or treaty preempts tribal law and governs the rights of participating parties or third parties affected by the transaction;

(b) a landlord's lien;

- (c) a lien given by statute or other rule of law for services or materials except as provided in Section 57.2.331;
  - (d) a transfer of a claim for wages, salary or other compensation of an employee;
  - (e) a transfer by a government or governmental subdivision or agency;
  - (f) a sale of accounts or chattel paper, or payment intangibles as part of a sale of the business out of which they arose;
  - (g) an assignment of accounts or chattel paper, or payment intangibles which is for the purpose of collection only;
  - (h) a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract;
  - (i) a transfer of a single account, or payment intangibles to an assignee in whole or partial satisfaction of a preexisting indebtedness;
  - (j) a transfer of an interest or claim under any insurance policy, except:
    - (i) a transfer by a healthcare provider of a right to payment arising out of the furnishing of healthcare goods or services; and
    - (ii) as provided with respect to proceeds (Section 57.2.313) and priorities in proceeds (Section 57.2.319);
  - (k) a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);
  - (l) any right of set-off as provided in 57.2.338;
  - (m) a transfer in whole or in part of any claim arising out of tort; or
- (2) The application of this Title is limited to the extent that provision is made within this Title for:
- (a) fixtures in Section 57.2.332, or
  - (b) the creation or transfer of an interest, including a lease or rents, or lien on real estate.

#### 57.2.106. Applicability of Other Statutes.

A transaction, although subject to this Title, may also be subject to the requirements found in the Tribal EDA Title IX Revolving Loan Funds Guidelines and Plan of Operations and Tribal Land Ordinance. In case of conflict between the provisions of this Title and any other statute, the more specific statute controls. Failure to comply with an applicable statute has only the effect the statute specifies.

### PART 2. VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT

#### Sub-Part 1. Validity and Attachment.



### 57.2.201. General Validity of Security Agreement.

(1) Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against subsequent purchasers of the collateral and against creditors.

(2) Nothing in this Title validates any practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject to the statute or regulation.

### 57.2.202. Title to Collateral Immaterial.

Rights, obligations and remedies under this Title apply whether title to the collateral is in the Debtor or Secured Party except as otherwise provided with respect to consignments, sales or accounts, chattel paper or payment intangibles.

### 57.2.203. Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites.

(1) A security interest is not enforceable against the Debtor or third parties with respect to the collateral and does not attach unless:

(a) (i) the collateral is in the possession of the Secured Party pursuant to the debtor's agreement,

(ii) the collateral is investment property or a deposit account and the Secured Party has control pursuant to the Debtor's agreement; or

(iii) the debtor has signed a security agreement which contains a description of the collateral. When the security interest covers crops growing, crops to be grown or timber to be cut the description must also include a description of the land concerned;

(b) value has been given; and

(c) the Debtor has rights in the collateral.

(2) Attachment provisions in 57.2.202(1) are in addition to attachment provisions on:

(a) a security interest in investment property (57.2.206);

(b) the requirements on new debtors (57.2.203(3)).

(3) If a new Debtor becomes bound as Debtor by a security agreement entered into by a predecessor in interest, the agreement satisfies the requirement of Section 57.2.203(1)(a) as to existing or after acquired property of the new debtor to the extent the property is described in the agreement. No other agreement is necessary to make a security interest in the property enforceable.

(4) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Section 57.2.203(1) have taken place unless explicit agreement by the parties postpones the time of attaching.

(5) Unless otherwise agreed:

(a) a security agreement gives the secured party the rights to proceeds provided by

Section 57.2.313; or

(b) attachment of a security interest in collateral is also attachment of a security interest in a support obligation with respect to the collateral;

57.2.204. After-Acquired Property; Future Advances.

(1) Except as provided in 57.2.204(2), a security agreement may create or provide for a security interest in after acquired collateral.

(2) No security interest attaches to Consumer Goods under an after-acquired property clause, except:

(a) to accessions (Section 57.2.333) when given as additional security; or

(b) the debtor acquires rights to the after acquired Consumer Goods within ten days after the secured party gives value.

(3) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given "pursuant to commitment."

57.2.205. Use or Disposition of Collateral Without Accounting Permissible.

(1) A security interest is not invalid or fraudulent against creditors by reason of:

(a) liberty in the debtor to:

(i) use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods);

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of goods or make authorized repossessions; or

(iv) use, commingle or dispose of proceeds; or

(b) the secured party failing to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession where perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party or by a bailee.

57.2.206. Security Interest Arising in Purchase or Delivery of Financial Asset.

(1) (a) A securities intermediary has a security interest in the buyer's security entitlement if:

(i) a person buys a financial asset through a securities intermediary;

(ii) in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(iii) the securities intermediary credits the financial asset to the buyer's

securities account before the buyer pays the securities intermediary.

(b) A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

## Sub-Part 2. Validity and Attachment.

### 57.2.207. Rights and Duties When Collateral Is in Secured Party's Possession.

(1) If a security interest secures an obligation, or a buyer of accounts, chattel paper, or payment intangibles is entitled by agreement to charge back uncollected collateral or otherwise entitled to full or limited recourse against the debtor or against a secondary obligor, the secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper, reasonable care includes taking any necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed and notwithstanding any contrary provision in Section 57.2.602, if a security interest secures an obligation and collateral is in the secured party's possession:

(a) reasonable expenses, including the cost of any insurance and payment of taxes or other related charges incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the secured party to the extent of a deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money received, unless remitted to the debtor, must be applied to reduce the secured obligation;

(d) the secured party must keep the collateral identifiable but collateral of which any unit is by nature or usage of trade the equivalent of any other like unit may be commingled; and

(e) the secured party may create additional security interests in the collateral upon terms which do not impair the rights of pre-existing security interests.

(3) A secured party is liable for any loss caused by the failure to meet any obligation imposed by Section 57.2.207(1) or (2) but the secured party does not lose its security interest.

(4) A secured party may use or operate the collateral:

(a) for the purpose of preserving the collateral;

(b) for the purpose of preserving the collateral's value;

(c) pursuant to tribal court order; or

(d) in the manner and to the extent provided in the security agreement. A security agreement may not restrict the use or operation of a consumer good.

#### 57.2.208. Request for Accounting, List of Collateral or Statement of Account.

(1) A debtor may sign a statement indicating what the debtor believes to be the total amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor.

(2) The secured party shall comply with a request pursuant to Section 57.2.208(1) within two weeks after receipt by sending a written correction or approval. If the secured party fails to comply without reasonable excuse, the secured party is liable for any loss caused to the debtor for noncompliance.

(a) If the debtor has properly included in a request pursuant to Section 57.2.208(1), a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against person's misled by the secured party's noncompliance.

(b) If the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(c) If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the

secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral.

(3) If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party shall disclose the name and address of any successor in interest known to the secured party and is liable for any loss caused to the debtor as a result of failure to disclose this information. A successor in interest is not subject to this section until a request is received by the successor.

(4) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$50.00 for each additional statement furnished.

### PART 3. PERFECTION OF SECURITY INTERESTS.

#### Sub-Part 1. Law Governing Perfection and Priority.

#### 57.2.301. Perfection and Priority of Certain Possessory and Nonpossessory Security Interests.

(1) The following rules apply to a possessory or nonpossessory security interest in collateral other than goods covered by a certificate of title described in Section 57.2.303, deposit accounts, investment property, and minerals and related accounts described in Section 57.2.306.

(2) Except as otherwise provided in this section, perfection and the effect of perfection or

non-perfection of a security interest in collateral are governed by the law of the Tribe.

57.2.302. Perfection and Priority of Agricultural Liens.

(1) Perfection of an agricultural lien on collateral derived from land found within the exterior boundaries of the Reservation is governed by the law of the Tribe.

(2) While collateral is located in any jurisdiction, the effect of perfection or non-perfection and the priority of an agricultural lien on the collateral are governed by the law of the Tribe.

57.2.303. Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(1) This subsection applies to goods covered by a certificate of title issued under Tribal law or from any other jurisdiction under which indication of a security interest on the certificate is required as a condition of perfection.

(2) Goods become covered by a certificate of title when an appropriate application for the certificate and the applicable fee are delivered to the appropriate authority.

(3) Perfection, the effect of perfection or non-perfection, and the priority of the security interest are governed by the local law of the jurisdiction under whose certificate the goods are covered. This security interest is valid from the time the goods become covered by the certificate until the time the certificate becomes ineffective under the law of that jurisdiction or the time the goods become covered by a certificate of title from another jurisdiction.

57.2.304. Perfection and Priority of Security Interests in Deposit Accounts.

Perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account are governed by the law of the Tribe.

57.2.305. Perfection and Priority of Security Interests in Investment Property.

(1) Except as otherwise provided in section 57.2.305(2), the following rules apply to a security interest in investment property:

(a) While a security certificate is located within Tribe's jurisdiction, perfection, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the law of the Tribe.

(b) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in an un-certificated security are governed by the local law of the issuer's jurisdiction.

(c) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the law of the Tribe.

(d) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the law of the Tribe.

(2) The law of the Tribe governs perfection of a security interest created by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or

commodity account granted by a commodity intermediary.

#### 57.2.306. Perfection and Priority of Security Interest in Minerals.

Perfection, the effect of perfection or non-perfection and the priority of a security interest that is created by a debtor having an interest in minerals or the like (including oil and gas) before

extraction and which attaches upon extraction, or which attaches to an account resulting from the sale of the collateral at the wellhead or minehead are governed by the law of the Reservation. This section does not apply to tribal resources held in trust.

#### 57.2.307. Location of Debtor.

(1) A registered entity is located in the jurisdiction of its organization.

(2) Any other debtor is located at its place of business if it has only one, at its chief executive office if it has more than one place of business, and at the debtor's residence if the debtor has no place of business.

#### Sub-Part 2. Perfection.

##### 57.2.308. When Security Interest or Agricultural Lien is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken as specified in Sections 57.2.309 through 57.2.313. If such steps are taken before the security interest attaches, it is perfected at the time it attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection specified in Section 57.2.309 and 57.2.313 have been met. If the steps are taken before the agricultural lien becomes effective, it is perfected when it becomes effective.

(3) A security interest or agricultural lien originally perfected in any manner permitted under this Title and subsequently perfected in another manner permitted under this Title shall be deemed to be continuously perfected for the purpose of this Title provided there was no intermediary period when the security interest or agricultural lien was unperfected.

(4) Perfection of a security interest in an account, chattel paper, a document, an instrument, a general intangible, or a security also perfects a security interest in a support obligation for the collateral.

(5) Perfection of a security interest in a securities account also perfects a security interest in all security entitlements carried in the securities account. Perfection of a security interest in a commodity account also perfects a security interest in all commodity contracts carried in the commodity account.

(6) Notwithstanding other law to the contrary, perfection of a security interest in a right to payment or performance, other than a right to payment evidenced by chattel paper, also perfects a security interest in a lien on property securing the right.

##### 57.2.309. When Filing Is Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions of This Part Do

Not Apply.

(1) A financing statement must be filed to perfect all security interests and agricultural liens, except the following:

- (a) a security interest in collateral in the secured parties possession under Section 57.2.311;
- (b) a security interest perfected under Section 57.2.314(1), (3) or (4);
- (c) a security interest in instruments certificated securities, chattel paper, or documents perfected without filing or possession under Section 57.2.310(4) or (5);
- (d) a security interest in or agricultural lien on proceeds under Section 57.2.313(5);
- (e) a security interest in a support obligation under Section 57.2.308(4);
- (f) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (g) a purchase money security interest in consumer goods; but 57.2.309(4) applies to consumer goods that are subject to a federal statute or applicable treaty described in 57.2.309(3);
- (h) an assignment of accounts or payment intangibles which does not alone, or in conjunction with other assignments to the same assignee, transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (i) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee;
- (j) a security interest arising in the purchase or delivery of a financial asset under Section 57.2.206;
- (k) a security interest in investment property created by a broker or securities intermediary;
- (l) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (m) a security interest in a letter of credit and proceeds of the letter of credit which is perfected without filing under Section 57.2.312;
- (n) a security interest in property subject to a federal statute, regulation, or applicable treaty described in 57.2.309(3);
- (o) a security interest in a deposit account which is perfected without filing under Section 57.2.312; and
- (p) a sale of a payment intangible.

(2) If a secured party assigns a perfected security interest, no filing under this Title is required in order to continue the perfected status of the security interest against creditors and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Title is not necessary or effective to perfect a security interest in property subject to:

(a) federal statutes, regulations or applicable treaties of the United States which provides for:

(i) national or international registration;

(ii) national or international certificate of title; or

(iii) which specifies a place of filing different from that specified in this Title for filing of the security interest; or

(b) the following tribal regulations, loan guidelines, contracts, or the like. During any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Title (Part 4) apply to a security interest in that collateral created by the person as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition or result of perfection (Section 57.2.303).

(4) Compliance with the requirements prescribed by a statute, regulation, or treaty described in Section 57.2.309(3) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Part. Except as otherwise provided in Sections 57.2.311 and 57.2.314(3) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in Section 57.2.309(3) can be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral. Except as otherwise provided in Section 57.2.314(3), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by the statute, regulation, or treaty are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this Part.

57.2.310. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in instruments, chattel paper, investment property or negotiable documents may be perfected by filing. Except as otherwise provided in Section 57.2.313(5) for cash proceeds:

(a) a security interest in money can be perfected only by the secured party's taking possession (Section 57.2.311);

(b) a security interest in a deposit account can be perfected only by control (Section 57.2.312); and

(c) except as otherwise provided in Section 57.2.308(4) for support obligations, a security interest in a letter of credit and proceeds of the letter of credit can be perfected only by control (Section 57.2.312).

(2) A security interest in goods in the possession of a bailee that has issued a negotiable document covering the goods is perfected by perfecting a security interest in the document. Any



security interest in the goods otherwise perfected during the period is subordinate to the security interest perfected in the document.

(3) A security interest in goods in the possession of a bailee that has issued a non-negotiable document covering the goods is perfected by:

- (a) issuance of a document in the name of the secured party;
- (b) the bailee's receipt of notification of the secured party's interest; or
- (c) filing as to the goods.

(4) A security interest in instruments is perfected without filing or the taking of possession for a period of 21 days from the time it attaches. In order for the security interest to attach the secured party must have given new value under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing if a secured party having a perfected security interest in an instrument, certified security, negotiable document or goods in possession of a bailee other than a bailee who has issued a negotiable document for those goods:

- (a) makes available to the debtor the goods or documents representing the goods:
  - (i) for the purpose of ultimate sale or exchange; or
  - (ii) for the purpose of loading, unloading, storing, shipping, manufacturing, processing or otherwise dealing with the goods in a manner preliminary to their sale or exchange, but priority among conflicting security interests in the goods is subject to Section 57.2.322; or

(b) delivers the instrument or certified security to the debtor for the purpose of:

- (i) ultimate sale or exchange; or
- (ii) presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in 57.2.310(4) and (5) expires, perfection depends upon compliance with this Part.

57.2.311. When Possession by Secured Party Perfects Security Interest Without Filing.

(1) Except as otherwise provided in 57.2.311(2), a security interest in goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in certificated securities may be perfected by the secured party's taking possession of the security certificates.

(2) A security interest in goods covered by a certificate of title issued by the Reservation may be perfected by the secured party's taking possession of the collateral only in the circumstances described in Section 57.2.314(3).

(3) This subsection applies to collateral other than goods covered by a document.

- (a) A security interest is perfected by possession when the secured party takes

possession, without a relation back, and continues only while the secured party retains possession, unless otherwise specified in this Part.

(b) If the collateral is in the possession of a person other than the debtor, a secured party or a lessee in the ordinary course of the debtor's business takes possession when the person in possession acknowledges in writing that it holds possession for the secured party's or lessee's benefit.

(c) If a person, other than the debtor, the secured party, or a lessee in the ordinary course of the debtor's business takes possession of the collateral after having acknowledged in writing that it will hold possession of collateral for the secured party's or lessee's benefit, the secured party or lessee takes possession when the person takes possession.

(4) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(5) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under subsection (c) even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or other law otherwise provides, the person owes no duties to the secured party and is not required to confirm the acknowledgment to another person.

(6) A security interest may be perfected as otherwise provided in this Part before or after a period of possession by a secured party.

#### 57.2.312. Perfection by Control.

(1) A security interest in investment property, a deposit account, or a letter of credit and proceeds of the letter of credit may be perfected by control of the collateral under Section 57.2.102 or 57.2.110.

(2) A security interest is perfected by control from the time the secured party obtains control without a relation back and continues only while control is retained.

(3) A security interest may be otherwise perfected as provided in this Part before or after the period of control by the secured party.

#### 57.2.313. Proceeds; Secured Party's Rights on Disposition of Collateral; Secured Party's Rights in Proceeds.

(1) Money, checks, deposit accounts, and the like are cash proceeds. All other proceeds are noncash proceeds.

(2) Except as otherwise provided in this Part, a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof, and also attaches to any identifiable proceeds, unless the secured party authorized the disposition free of the security interest in the security agreement or through subsequent agreement. Other law determines whether an agricultural lien continues on collateral notwithstanding disposition or becomes effective as to proceeds.

(3) Proceeds that are commingled with other property are identifiable proceeds:

- (a) if the proceeds are goods, to the extent provided by Section 57.2.334; and
  - (b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under other law with respect to commingled property of the type involved.
- (4) A security interest in or agricultural lien on proceeds is a perfected security interest or agricultural lien if the interest in or lien on the original collateral was perfected. The security interest in or agricultural lien on proceeds ceases to be a perfected interest or lien and becomes un-perfected on the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds unless:
- (a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed and, if the proceeds are acquired with cash proceeds or funds from a deposit account, the description of collateral in the financing statement indicates the type of property constituting the proceeds;
  - (b) the proceeds are identifiable cash proceeds; or
  - (c) the security interest in or agricultural lien on the proceeds is perfected before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.
- (5) Except as otherwise provided in 57.2.313(4), a security interest in or agricultural lien on proceeds can be perfected only by the methods or under the circumstances permitted in this Part for original collateral of the same type.
- (6) If a filed financing statement covers the original collateral, a security interest in or an agricultural lien on proceeds which remains perfected under 57.2.313(4)(a) becomes unperfected when the effectiveness of the filed financing statement lapses under Section 9-516 or is terminated under Section 9-511, but in no event before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.

57.2.314. Perfection of Security Interest or Agricultural Lien Following Change in Applicable Law.

- (1) This subsection applies to an agricultural lien and to a nonpossessory security interest in collateral other than goods covered by a certificate of title (Section 57.2.303), deposit accounts, investment property, and minerals and related accounts described in Section 57.2.306. A security interest or agricultural lien perfected under the law of the jurisdiction in which the debtor is located remains perfected until the expiration of four months after a change of the debtor's location to within the jurisdiction of the Reservation, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the Reservation before the end of that period, the security interest or agricultural lien continues perfected thereafter. If it does not become perfected under the law of the Reservation before the end of that period, the security interest or agricultural lien becomes unperfected and is deemed never to have been perfected.
- (2) This subsection applies to a possessory security interest in collateral, other than goods covered by a certificate of title (Section 57.2.303) and minerals described in Section 57.2.306. A security interest remains continuously perfected if:

- (a) the collateral is located in one jurisdiction and subject to a security interest

perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into the jurisdiction of the Reservation; and

(c) upon entry into the jurisdiction of the Reservation the security interest is perfected under the law of the Reservation.

(3) This subsection applies to goods covered by a certificate of title (Section 57.2.303). If a security interest in goods is perfected by any method under the law of another jurisdiction and the goods become covered by a certificate of title requirement from this jurisdiction the security interest remains perfected until the earlier of the time the security interest would have become unperfected under the law of the other jurisdiction or the expiration of four months after the goods have become located within this jurisdiction. If the security is perfected under Section 57.2.309(4) or 57.2.311 before the prior perfection ceases to be effective, the security interest continues perfected thereafter. If it does not become perfected under Section 57.2.309(4) or Section 57.2.311 before the earlier of that time or the expiration of that period, the security interest becomes unperfected and is deemed never to have been perfected.

(4) This subsection applies to deposit accounts and investment property. A security interest perfected under the law of the depositary institution's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, which ever is applicable, remains perfected until the expiration of four months after a change of the depositary institution's jurisdiction, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the Reservation before the end of that period, the security interest continues perfected thereafter. If it does not become perfected under the law of the Reservation before the end of that period, the security interest becomes unperfected and is deemed never to have been perfected.

### Sub-Part 3. Priority.

#### 57.2.315. Interests That Take Priority Over and Take Free of Unperfected Security Interests or Agricultural Lien.

(1) An unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 57.2.319; and

(b) a person who becomes a lien creditor before the security interest is perfected.

(2) Except as otherwise provided in 57.2.315(5), a buyer of goods, instruments, documents, a security certificate, or chattel paper that is not a secured party takes free of a security interest if the buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(3) Except as otherwise provided in 57.2.315(5), a lessee of goods takes free of a security interest if the lessee receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(4) A buyer of accounts, general intangibles, or investment property other than a security certificate which is not a secured party takes free of a security interest if the buyer gives value without knowledge of the security interest and before it is perfected.

(5) If the secured party files, with respect to a purchase money security interest, before or within 20 days after the debtor receives possession of the collateral, the security interest takes priority

over the rights of a buyer, lessee, or lien creditor which arises between the time the security interest attaches and the time of filing.

57.2.316. Rights and Title of Consignee and Seller of Account or Chattel Paper With Respect to Creditors and Purchasers.

(1) Goods purchased for personal, family or household use and goods having a value of less than \$1000.00 which are delivered or consigned do not become the property of the deliverer or consignee unless the deliverer or consignee purchases and fully pays for the goods. A deliverer or consignee may still act as the deliverer's agent for purposes of transferring title to a buyer of these goods. Payment received by the deliverer or consignee upon selling of the goods, may be reduced by any commissions, fees or expenses expressly agreed to by the deliverer with the remaining payment amount being the property of the deliverer and not subject to any claims by the deliverer's or consignee's creditors.

(2) For purposes of determining the rights of creditors of, and purchasers of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

57.2.317. Protection of Buyers of Goods.

(1) This section does not affect a security interest in goods in the possession of the secured party under Section 57.2.311.

(2) A buyer in the ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the seller, even if the security interest is perfected and the buyer knows of its existence.

(3) A buyer of consumer goods takes free of a security interest, even though perfected, if the buyer purchases the goods:

(a) without knowledge of the security interest;

(b) for value; and

(c) for the buyer's own personal, family or household purposes unless prior to the buyer's purchase the secured party has filed a financing statement covering the goods.

57.2.318. Lessees of Goods in Ordinary Course of Business.

A lessee of goods in ordinary course of business of the lessor takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

57.2.319. Priorities Among Conflicting Security Interests and Agricultural Liens in the Same Collateral.

(1) Except as otherwise provided in this part, with respect to a security interest of a collecting bank, and with respect to a security interest of an issuer or nominated person, priority among conflicting security interests and agricultural liens in the sale collateral is determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or

perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, if there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(2) For the purposes of 57.2.319(1), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

#### 57.2.320. Future Advances.

(1) This subsection applies only to a security interest that secures an obligation. For purposes of determining the priority of a security interest under Section 57.2.319(2), perfection of the security interest dates from the time an advance is made if the security interest secures an advance made, other than pursuant to commitment, while the security interest is temporarily perfected under Section 57.2.310(4) or (5) and by no other method.

(2) This subsection applies only to a security interest that secures an obligation. A security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) A buyer of goods, other than a buyer in ordinary course of business, takes free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the buyer's purchase, or more than 45 days after the purchase, whichever occurs first, unless the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period. This subsection does not affect a security interest in goods in the possession of the secured party under Section 57.2.311.

(4) A lessee of goods other than a lessee of goods in ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

#### 57.2.321. Priority of Production Money Security Interests and Agricultural Liens.

(1) Except as otherwise provided in 57.2.321(5), if the requirements of 57.2.321(2) are met, a perfected production money security interest in production money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 57.2.326, also has priority in their identifiable proceeds. A production money security interest has priority under this subsection only to the extent that the conflicting security interest secures obligations incurred more than six months before the production money secured party first gives new value to enable the debtor to produce the crops.

(2) A production money security interest has priority under 57.2.321(1) if:

(a) the production money security interest is perfected by filing when the production money secured party first gives new value to enable the debtor to produce the crops;

(b) the production money secured party gives written notification to the holder of

the conflicting security interest before the production money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production money secured party; and

(c) the notification states that the production money secured party has or expects to acquire a production money security interest in the debtor's crops and contains a description of the crops.

(3) Except as otherwise provided in 57.2.321(4), if more than one security interest qualifies for priority in the same collateral under 57.2.321(1), the security interests rank according to priority in time of filing under Section 57.2.319(2).

(4) If a statute provides that an agricultural lien in collateral has priority over a conflicting security interest or agricultural lien in the same collateral, the statute governs priority if the agricultural lien is perfected.

(5) To the extent that a person holds both an agricultural lien and a production money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

#### 57.2.322. Priority of Purchase Money Security Interests.

(1) Except as otherwise provided in 57.2.322(5), a perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable cash proceeds to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected when the debtor receives possession of the inventory;

(b) the holder of the purchase money security interest gives written notice to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory;

(i) before the date of a filing made by the purchase money secured party or;

(ii) before the beginning of the 20 day period where the purchase money security interest is temporarily perfected without filing or possession under Section 57.2.310(5);

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory ; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.

(2) If a purchase money security interest in inventory has priority over a conflicting security interest under 57.2.322(1), a security interest held by the purchase money secured party in chattel paper constituting proceeds of the inventory has priority over a conflicting security interest in the chattel paper if:

- (a) the purchase money secured party takes possession of the chattel paper in good faith;
  - (b) in the ordinary course of the secured party's business; and
  - (c) without knowledge that the security interest violates the rights of the holder of the conflicting security interest.
- (3) Except as otherwise provided in 57.2.322(5), a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable proceeds and identifiable products in their unmanufactured states if:
- (a) the purchase money security interest is perfected when the debtor receives possession of the livestock;
  - (b) the purchase money secured party gives written notification to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of livestock before the date of a the filing made by the purchase money secured party, or before the beginning of the 20 day period if the purchase money security interest is temporarily perfected without filing or possession under Section 57.2.310(5);
  - (c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock ; and
  - (d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in livestock of the debtor, describing the livestock by item or type.
- (4) Except as otherwise provided in 57.2.322(5), a purchase money security interest in collateral other than inventory or livestock has priority over a conflicting security interest in the same collateral and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable proceeds if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.
- (5) If more than one security interest qualifies for priority in the same collateral under 57.2.322(1), (3), or (4):
- (a) a security interest securing an obligation incurred as the price of the collateral has priority over a security interest securing an obligation incurred by an obligor for value given to enable the debtor to acquire rights in collateral; and
  - (b) in all other cases, Section 57.2.319(2) applies to the qualifying security interests.

#### 57.2.323. Priority of Security Interests in Transferred Collateral.

- (1) If a debtor acquires property subject to a perfected security interest created by another person, any security interest created by the debtor is subordinate to the security interest created by the other person, if there is no period when the prior security interest is unperfected, notwithstanding anything to the contrary in this part.
- (2) If a debtor acquires property subject to an unperfected security interest created by the other person or which becomes unperfected at any time thereafter, the other sections of this subpart



govern, as applicable.

57.2.324. Priority of Security Interests Created by New Debtor.

(1) A perfected security interest in collateral that is effective solely by a filed financing statement under Section 57.2.510, which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected in another manner.

(2) If more than one security interest in the same collateral is subordinate under this subsection, the other rules stated in this subpart determine the priority of the subordinated security interests.

57.2.325. Priority of Security Interests in Investment Property.

Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) A possessory security interest in a security certificate in registered form has priority over a conflicting security interest perfected by a method other than control.

(c) Except as otherwise provided in section 57.2.325(d) and (e), conflicting security interests of secured parties each of whom has control rank equally.

(d) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(f) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(g) In all other cases, priority between conflicting security interests in investment property is governed by Section 57.2.319(2) and (3) and 57.2.320(1).

57.2.326. Priority of Security Interests in Deposit Accounts.

Priority among conflicting security interests in the same deposit account is governed by the following rules:

(a) A security interest held by a secured party that has control over the deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 57.2.326(c) and (d), security interests perfected by control rank equally.

(c) Except as otherwise provided in 57.2.326(d), a security interest held by the depository institution with which the deposit account is maintained has priority over

a conflicting security interest held by another secured party.

(d) A security interest perfected by control has priority over a security interest held by the depositary institution with which the deposit account is maintained.

#### 57.2.327. Priority of Security Interests in Letters of Credit.

Priority among conflicting security interests in the same letter of credit and proceeds of the letter of credit is governed by the following rules:

(a) A security interest held by a secured party that has control over the letter of credit and proceeds of the letter of credit has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 57.2.327(c), security interests perfected by control rank equally.

(c) A security interest held by a transferee beneficiary has priority over a conflicting security interest held by another secured party.

#### 57.2.328. Purchase of Chattel Paper and Instruments.

(1) A purchaser of chattel paper or an instrument has priority over a security interest in the chattel paper or instrument and, except as otherwise provided in Section 57.2.326, in its proceeds if the purchaser gives new value and takes possession of the chattel paper or instrument:

(a) in good faith;

(b) in the ordinary course of the purchaser's business; and

(c) without knowledge that the purchase violates the rights of the secured party.

(2) For purposes of 57.2.328(1), if chattel paper or an instrument indicates that it has been assigned to an identified assignee, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the assignee.

(3) A possessory security interest in an instrument has priority over a conflicting security interest perfected by another method.

#### 57.2.329. Rights of Purchasers of Instruments, Documents and Securities Under Other Law.

(1) Nothing in this Part limits the rights of:

(a) a holder in due course of a negotiable instrument,

(b) a holder to whom a negotiable document of title has been duly negotiated, or

(c) a protected purchaser of a security.

(2) These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided under applicable law. Filing under this Part does not constitute notice of the security interest to those holders or purchasers.

#### 57.2.330. Transfer of Money; Transfer of Funds From Deposit Account.

(1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

#### 57.2.331. Priority of Certain Liens Arising by Operation of Law.

(1) When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

(2) A perfected security interest or an unperfected security interest is subordinate to any Tribal Lien in existence when the security interest is created.

#### 57.2.332. Priority of Security Interests in Fixtures.

(1) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Title may be created in goods which are fixtures or may continue in goods that become fixtures, but no security interest exists in ordinary building materials incorporated into an improvement on land.

(3) This Title does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) (i) the security interest is a purchase money security interest;

(ii) the interest of the encumbrancer or owner arises before the goods become fixtures;

(iii) the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter; and

(iv) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) (i) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record;

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner; and

(iii) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) (i) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are

consumer goods; and

(ii) before the goods become fixtures the security interest is perfected by any method permitted by this Title; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Title.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the fixture(s) as against the encumbrancer or owner.

(6) If the debtor's right terminates, the priority of the security interest continues for a period of ninety days, beginning on the date the debtor's rights terminate.

(7) Notwithstanding Section 57.2.332(4)(a) but otherwise subject to sections 57.2.332(4), (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that a mortgage is given to refinance a construction mortgage, the mortgage has the same priority date as the construction mortgage.

(6) In all other instances, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(7) When the secured party has priority over all owners and encumbrances of the real estate, on default the secured party may remove the collateral from the real estate. However, the secured party must reimburse any encumbrancer or owner of the real estate who is not the debtor for any physical injury to the real estate, but not for any diminution in value caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

#### 57.2.333. Accessions.

(1) A security interest in goods which attaches before the goods are installed or affixed to other goods takes priority over the claims of all other persons to which the initial goods were installed or affixed. The attached security interest in goods prior to installation or affixation is limited to those goods installed or affixed but does not include the goods to which the initial goods were installed or affixed except as stated in section 57.2.333(3).

(2) A security interest which attaches to goods after they become part of a whole:

(a) is valid against all persons subsequently acquiring interests in the whole except as stated in section 57.2.333(3); and

(b) is invalid against any person with an interest in the whole at the time the security interest attaches to the goods, who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) A security interest described in sections 57.2.333(1) and (2) made or contracted for without knowledge of the security interest and before the security interest is perfected do not take priority over:

- (a) a subsequent purchaser for value of any interest in the whole;
- (b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or
- (c) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances.

(4) A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at the holder's own foreclosure sale, is a subsequent purchaser within this section.

(5) When the secured party has an interest in accessions which has priority over the claims of all persons who have interest in the whole, on default the secured party may remove the collateral from the whole. However, the secured party must reimburse any encumbrancer or owner of the whole who is not the debtor for the cost of repair of any physical injury to the whole, but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

#### 57.2.334. Priority When Goods Are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods, or a part thereof, have become part of a product or mass, the security interest continues in the product or mass if:

- (a) the goods are manufactured, processed, assembled or commingled in a manner that causes their identity to be lost; or
- (b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

(2) When section 57.2.334(1)(b) applies, no separate security interest in the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 57.2.334.

(3) When more than one security interest attaches to the product or mass under Section 57.2.334(1), the security interests have equal priority and are apportioned by the ratio that the cost of the original security interests bear to the total value of the product or mass.

#### 57.2.335. Priority of Security Interest in Goods Covered by a Certificate of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, the Reservation issues a certificate of title (Section 57.2.303) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (a) A buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without

knowledge of the security interest; and

(b) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 57.2.309(4), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

#### 57.2.336. Priority of Security Interest Perfected by Effective Financing Statement Containing Incorrect Information.

A security interest, or agricultural lien, perfected by a filed financing statement complying with Section 57.2.502(1) but containing information described in Section 57.2.515(2)(e) that is

incorrect is subordinate to the rights of a purchaser of the collateral which gives value in reasonable reliance upon the incorrect information.

#### 57.2.337. Priority Subject to Subordination.

Nothing in this Part prevents subordination by agreement by any person entitled to priority.

#### 57.2.338. Effectiveness of Right of Recoupment or Set-off Against Deposit Account.

(1) Except as otherwise provided in 57.2.338(3) and (4), a depositary institution where a deposit account is maintained may exercise any right of recoupment and any right of set-off against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in 57.2.338(3), the application of this Part to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(3) A depositary institutions exercising a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control.

(4) A depositary institution shall obtain leave of court prior to the exercise of any right of set-off.

#### 57.2.339. Depositary Institution's Right to Dispose of Funds in Deposit Account.

Except as otherwise provided in Section 57.2.338(3), and unless the depositary institution otherwise agrees in writing, a depositary institution's rights and duties with respect to a deposit account maintained with the depositary institution are not terminated, suspended, or modified by:

(a) the creation or perfection of a security interest in the deposit account; or

(b) the depositary institution's knowledge of the security interest.

### PART 4. RIGHTS OF THIRD PARTIES.

#### 57.2.401. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred by way of sale, creation of a security interest, attachment, levy or other recognized judicial process notwithstanding a provision in the security agreement prohibiting any transfer or indicating any transfer constitutes a default.

#### 57.2.402. Secured Party Not Obligated on Contract of Debtor.

The existence of a security interest, agricultural lien or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

57.2.403. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) This part is subordinate to any other law that establishes a different rule for consumer account debtors.

(2) Except as provided in Section 57.2.403(3), an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense the account debtor may have against the assignor is enforceable by the assignee that takes an assignment:

(a) for value;

(b) in good faith;

(c) without notice of a claim or defense to the property assigned; and

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 57.2.305(1).

(3) An agreement of the kind described in Section 57.2.403(2) is not enforceable against a holder in due course of a negotiable instrument under Section 57.2.305(2).

57.2.404. Rights Acquired by Assignee; Defenses Against Assignee; Modification of Contract; Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Term Prohibiting Assignment Ineffective.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to 57.2.404(2), the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any recognized defense or claim arising from the contract; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) The claim of an account debtor may be asserted against an assignee under Section 57.2.404(1) only to reduce the amount owing when the action is brought.

(3) To the extent that the right to full or partial payment under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(4) Subject to 57.2.404(5), (6) and (7), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until but not after the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of notification, the account debtor may discharge its obligation by paying the assignee.

(5) An assignee may not send a notification under Section 57.2.404(4) that directs an account debtor to make less than the full amount of any installment payment to the assignee, regardless of whether only a portion of the account, chattel paper, or general intangible has been assigned to that assignee, a portion has been assigned to another assignee, or the account debtor knows that the assignment to that assignee is limited.

(6) A notification is ineffective under Section 57.2.404(4):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under other law.

(7) If requested by the account debtor, the assignee must within 10 days furnish reasonable proof that the assignment has been made. Unless the assignee does so, the account debtor may discharge its obligation by paying the assignor even if the account debtor has received notification under Section 57.2.404(4).

(8) This subsection does not apply to the sale of a payment intangible. Except as otherwise provided under other applicable law, a term in any contract between an account debtor and an assignor is ineffective if it prohibits, restricts, or requires the account debtor's consent to assignment of an account, chattel paper, or a payment intangible.

#### 57.2.405. Restrictions on Assignment of Certain General Intangibles Ineffective.

(1) Section 57.2.405(2) applies to a security interest in a payment intangible only if the security interest arises out of a sale of the payment intangible.

(2) A term in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor that prohibits, restricts, or requires the account debtor's consent to the assignment or transfer of or creation, attachment, or perfection of a security interest in the general intangible, is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest;

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the general intangible.

(3) A term in a statute or governmental rule or regulation that prohibits, restricts, or requires the consent of a government or governmental body or official to the assignment or creation of a security interest in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest; or

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, claim, defense, termination, right of termination, or remedy under the general intangible.

(4) To the extent that a term in a general intangible, statute, rule, or regulation is ineffective



under Section 57.2.405 (3) or (4) but is effective under other law, the creation, attachment, or perfection of a security interest in the general intangible:

- (a) is not enforceable against the account debtor;
- (b) imposes no duties or obligations on the account debtor; and
- (c) does not require the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(5) This section controls over any inconsistent provisions of the following statutes, rules, and regulations:

Note: List any statutes, rules, and regulations containing provisions inconsistent with this section.

## PART 5. FILING.

### Sub-Part 1. Place of Filing, Contents and Effectiveness of Financing Statement.

#### 57.2.501. Place of Filing.

(1) Except as otherwise provided in Section 57.2.501(2), if tribal law governs perfection of a security interest (Sections 57.2.301 through 57.2.307), the place to file a financing statement to perfect the security interest is:

(a) the Tribal Department of Commerce - Filing Office (Filing Office) is designated as responsible for coordinating with other appropriate agencies the filing or recording of a mortgage on the real estate, if the collateral is:

(i) timber to be cut;

(ii) minerals or the like, including oil and gas;

(iii) accounts subject to Section 57.2.306; or

(iv) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; and

(b) the Filing Office in all other cases, including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) Subject to Section 57.2.9-309(3), the place to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Filing Office. This financing statement constitutes a fixture filing as to the described collateral that is or is to become fixtures.

#### 57.2.502. Contents of Financing Statement; Mortgage as Financing Statement; Time of Filing Financing Statement.

(1) A financing statement is sufficient only if it gives the names and mailing addresses of the debtor and the secured party or a representative of the secured party and contains a statement indicating the collateral covered by the financing statement.

(2) If the financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, or if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures, the financing statement also must show that it covers this type of collateral, recite that it is to be filed in the real estate records, contain a description of the real estate and, if the debtor does not have an interest of record in the real estate, show the name of a record owner.

(3) A real estate mortgage is effective as a financing statement filed as a fixture filing from the date of its recording only if:

(a) the mortgage indicates the goods that it covers;

(b) the goods are or will become fixtures related to the real estate described in the mortgage;

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded.

- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

#### 57.2.503. Name of Debtor and Secured Party.

(1) A financing statement sufficiently gives the name of the debtor:

(a) if the debtor is a registered entity, only if the financing statement gives the name of the debtor as shown on the public records of the debtor's jurisdiction of organization;

- (b) if the debtor is a decedent's estate, only if the financing statement gives the name of the decedent and indicates that the debtor is an estate;

(c) if the debtor is a trust, only if the financing statement gives the name, if any, specified for the trust in its organic documents or, if no name is specified, gives the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors and indicates, in the debtor's name or otherwise, that the debtor is a trust; and

(d) in other cases, only if it gives the individual or organization name of the debtor.

(2) A financing statement that sufficiently gives the name of the debtor is not rendered ineffective by the absence of a trade or other name or names of partners, members, or associates.

(3) A financing statement may give the name of more than one debtor, may give, as an additional debtor, a trade or other name for the debtor, and may give the name of more than one secured party.

(4) The failure to indicate the representative capacity of a secured party or a representative of a secured party does not affect the sufficiency of a financing statement.

#### 57.2.504. Indication of Collateral.

A description of the collateral, an indication of the type of collateral, or a statement to the effect that the financing statement covers all assets or all personal property is sufficient to indicate the collateral that is covered by a financing statement.

57.2.505. Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Bailments, and Other Transactions.

(1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible may file a financing statement, or may comply with a statute or treaty described in Section 9-303, using the terms consignor, consignee, lessor, lessee, bailor, bailee, owner, registered owner, buyer, seller, or the like, instead of the terms debtor and secured party.

(2) This part applies to a financing statement and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 57.2.309, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. However, if it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

57.2.506. Effect of Minor Errors.

(1) A financing statement substantially complying with the requirements of this part is effective, even if it contains minor errors that are not seriously misleading.

(2) A financing statement that fails to give the correct name of the debtor in accordance with Section 57.2.503(1) is seriously misleading unless a search of the records of the Filing Office conducted in accordance with a rule adopted pursuant to Section 9-526 under the debtor's correct name would disclose the financing statement, in which case the incorrect name does not render the financing statement seriously misleading.

57.2.507. Effect of Certain Changes on Effectiveness of Financing Statement.

(1) If a debtor so changes its name that a filed financing statement becomes seriously misleading:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after the change.

(2) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues under Section 57.2.313(2), even if the secured party knows of or consents to the disposition.

(3) Except as otherwise provided in Section 57.2.506(1) and Section 57.2.510, a financing statement is not rendered ineffective if, after the financing statement is filed, the information contained in the financing statement becomes inaccurate and seriously misleading.

57.2.508. Authorization of Financing Statement; Liability for Unauthorized Filing.

(1) A person may not file an initial financing statement or an amendment that adds collateral covered by a financing statement unless:

(a) the debtor authorizes the filing in a signed writing or in a signed record in another medium authorized in writing by the debtor; or

(b) the person holds an agricultural lien at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By signing a written security agreement, a debtor authorizes the secured party to file an initial financing statement and an amendment covering the collateral described in the security agreement.

(3) A person that files an initial financing statement or an amendment that adds collateral and that claims an agricultural lien in the collateral covered by the financing statement shall send a copy of the financing statement or the amendment to the debtor not later than the 10th day after the filing. The person shall send the copy to the most recent mailing address of the debtor known to the person.

(4) A person that files an initial financing statement or an amendment in violation of Section 57.2.508(1) and that fails to send a copy of a financing statement or amendment to the debtor in accordance with Section 57.2.508(3) is liable to the debtor for any documented actual and reasonable costs incurred by the debtor to cure the failure and any loss thereby sustained by the debtor.

#### 57.2.509. Amendment of Financing Statement.

Subject to Section 57.2.513, a secured party of record may add or release collateral covered by a financing statement or otherwise amend the information contained in a financing statement by filing an amendment that identifies the initial financing statement by the date of filing and the file number assigned pursuant to Section 57.2.520(a) or by another method prescribed by rule. An

amendment does not extend the period of effectiveness of a financing statement. If an amendment adds collateral, it is effective as to the added collateral only from the date of filing of the amendment.

#### 57.2.510. Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement.

(1) Except as otherwise provided in 57.2.510(2) and (3), a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective if the original debtor acquired rights in the collateral.

(2) If a filed financing statement that is effective under 57.2.510(1) is seriously misleading with respect to the name of the new debtor:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 57.2.203(3); and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 57.2.203(3) unless an amendment that renders the financing statement not seriously misleading is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 57.2.507(2).

#### 57.2.511. Termination Statement.

(1) A secured party of record for a financing statement may file a termination statement for the financing statement.

(2) (a) If a financing statement covers consumer goods, within 10 days after written demand by the debtor after there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, the secured party of record shall file with the Filing Office a termination statement for the financing statement.

(b) In other cases, if there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, or if a financing statement covers accounts, chattel paper, or payment intangibles that have been sold but as to which the account debtor other person obligated has discharged its obligation, the secured party of record for a financing statement, within 10 days after written demand by the debtor, shall send the debtor a termination statement for the financing statement or file the termination statement with the Filing Office.

(3) A secured party of record that fails to file or send a termination statement as required by this subsection is liable to the debtor for any documented actual and reasonable costs incurred by the debtor to cure the failure and any loss thereby sustained by the debtor.

(4) Subject to Section 57.2.513, upon the filing of a termination statement with the Filing Office under 57.2.511(2), the financing statement to which the termination statement relates becomes ineffective.

#### 57.2.512. Assignment of Rights Under Financing Statement.

(1) Except as otherwise provided in Section 57.2.512(3), an initial financing statement may reflect an assignment of all of the secured party's rights under the financing statement with respect to some or all of the collateral by giving in the financing statement the name and mailing address of the assignee. Upon filing, the assignee named in an assignment filed under this subsection is a secured party of record for the financing statement. An assignment in an initial financing statement may state that the rights under the financing statement are being assigned only with respect to the portion of the collateral covered by the financing statement that is indicated in the assignment; otherwise, the rights under the financing statement are assigned with respect to all of the collateral covered by the financing statement.

(2) A secured party may assign all or part of the secured party's rights under a financing statement by filing in the Filing Office a written statement of assignment signed by the secured party, or a copy thereof, and setting forth:

- (i) the name of the recorded secured party and the debtor;
- (ii) the file number and the date of filing of the financing statement;
- (iii) the name and address of the assignee; and
- (iv) a description of the collateral assigned.

(3) An assignment of record of a security interest in a fixture covered by a real estate mortgage that is effective as a fixture filing under Section 57.2.502(2) may be made only by an assignment of record of the mortgage in the manner provided by other law of the Reservation, including

## EDA Loan Program and Land Ordinance provisions.

## 57.2.513. Multiple Secured Parties of Record.

(1) If there is more than one secured party of record for a financing statement, each secured party of record may file an amendment, continuation statement, or termination statement concerning its rights under the financing statement.

(2) A filing by one secured party of record does not affect the rights under the financing statement of another secured party of record.

## 57.2.514. Successor of Secured Party.

A person that succeeds to substantially all of the rights of a secured party by operation of law and becomes a secured party may act under this part without disclosing its status as a successor or may act in its own name as the disclosed successor of a secured party.

## 57.2.515. What Constitutes Filing a Record; Effectiveness of Filing.

(1) Except as otherwise provided in Section 57.2.515(2), presentation of a record to a Filing Office and tender of the filing fee or acceptance of the record by the Filing Office constitutes filing.

(2) Filing does not occur with respect to a record that a Filing Office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the Filing Office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the Filing Office is unable to index the record because:

(i) in the case of an initial financing statement, the record gives no name for a debtor or the Filing Office is unable to read or decipher the names given; or

(ii) in other cases, the record does not identify the initial financing statement as required by this part or the Filing Office is unable to read or decipher the identification;

(d) the Filing Office is unable to determine the secured party of record because the record does not give a name for the secured party of record or the Filing Office is unable to read or decipher the name given;

(e) in the case of an initial financing statement, the statement does not:

(i) indicate whether the debtor is an individual or an organization; or

(ii) if the financing statement indicates that the debtor is an organization, indicate the type of organization, give a jurisdiction of organization for the debtor, or give an organizational identification number for the debtor or indicate that the debtor has none; or

(f) in the case of an assignment in an initial financing statement under Section 57.2.512(1) or an amendment filed under Section 57.2.512(2), the record does not give a name for the assignee.

(3) Except as otherwise provided in Section 57.2.336, a filed financing statement complying with Section 57.2.502(1) is effective, even if some or all of the information described in Section 57.2.515(2)(e) is not given or is incorrect.

(4) A record that is presented to the Filing Office with tender of the filing fee but which the Filing Office refuses to accept pursuant to Section 57.2.521 for a reason other than one set forth in Section 57.2.515(2) is effective as a filed record except as against a purchaser of the collateral which gives value in reliance upon the absence of the record in the files.

#### 57.2.516. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement.

(1) Except as otherwise provided in Sections 57.2.516(3) and (4), a filed financing statement is effective for a period of five years after the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless before the lapse a continuation statement is filed pursuant to Section 57.2.516(2). Upon lapse, a financing statement becomes ineffective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest or agricultural lien is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(2) A continuation statement of a filed financing statement may be filed by a secured party of record within six month period before the expiration of the five-year period specified in 57.2.516(1).

(3) Subject to Section 57.2.513, upon timely filing of a continuation statement, the effectiveness of the initial financing statement is continued for five years after the last date on which the financing statement was effective, whereupon the financing statement lapses in the same manner as provided in Section 57.2.516(1) unless before the lapse another continuation statement is filed pursuant to this subsection. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(4) If a debtor is a transmitting utility and a filed financing statement so states, the financing statement is effective until a termination statement is filed.

(5) A real estate mortgage that is effective as a fixture filing under Section 57.2.502(2) remains effective as a fixture

filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

#### 57.2.517. Contents of Continuation Statement.

A continuation statement must identify the initial financing statement by file number and the date of filing or by another method prescribed by rule and state that it is a continuation statement or that it is filed to continue the effectiveness of the financing statement.

#### 57.2.518. Effect of Indexing Errors.

(1) Except as otherwise provided in Section 57.2.518 (2), the failure of the Filing Office to index

a record correctly does not affect the effectiveness of the record.

(2) A filed but improperly indexed record is ineffective against a purchaser of the collateral that gives value in reliance upon the apparent absence of the record in the files.

57.2.519. Claim Concerning Inaccurate or Wrongfully Filed Record; Failure to Send or File Termination Statement.

(1) If a person believes in good faith that a record indexed under the person's name with the Filing Office is inaccurate or was wrongfully filed, the person may file with the Filing Office a correction statement with respect to the record or financing statement.

(2) If a person believes in good faith that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement under Section 9-511, the person may file with the Filing Office a termination request with respect to the financing statement.

(3) A correction statement or termination request must identify the record or the initial financing statement to which it relates by the date of filing and the file number assigned under Section 57.2.520(a) or by another method prescribed by rule. A correction statement must give the basis for the person's belief that a record is inaccurate or was wrongfully filed and the manner in which the record should be amended in order to cure any inaccuracy. A termination request must give the basis for the person's belief that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement.

(4) Upon filing, a correction statement or a termination request becomes a part of the record or financing statement to which it relates, but neither the correction statement nor the termination request otherwise affects the record or financing statement.

Sub-Part 2. Duties and Operation of Filing Office.

57.2.520. Numbering, Maintaining, and Indexing Records.

(1) Except as otherwise provided in Sections 57.2.520(2) and (4), for each record filed with the Filing Office, the Filing Office shall:

- (a) assign a file number to the record;
- (b) create a record that bears the file number and the date and time of filing;
- (c) maintain the filed record for public inspection;
- (d) index the filed record according to the name of the debtor in such a manner that each initial financing statement is interrelated to all filed records relating to it; and
- (e) note in the index the file number and the date and time of filing.

(2) If a financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, or is filed as a fixture filing, the Filing Office shall index it under the names of the debtor, and any owner of record shown on the financing statement, as if they were the mortgagors under a mortgage of the real estate described. The Filing Office shall index a financing statement as if it were a mortgage to the extent that the law of the Reservation provides for indexing of mortgages:



(a) under the name of the mortgagee,

(b) under the name of the secured party as if the secured party were the mortgagee,  
or,

(c) by description.

(3) In the case of a fixture filing, or a financing statement covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, the Filing Office shall index an assignment filed under Section 57.2.512(1) or an amendment filed under Section 57.2.512(2), under the name of the assignor as grantor and, to the extent that the law of the Reservation provides for indexing the assignment of a real estate mortgage under the name of the assignee, the Filing Office shall index the assignment or the amendment under the name of the assignee.

(4) The Filing Office shall perform the acts required by Sections 57.2.520(1), (2), and (3) at the time and in the manner prescribed by rule.

- The Filing Office is responsible for coordinating with other appropriate agencies to record security interests as provided in this Title.

#### 57.2.521. Acceptance and Refusal to Accept Record.

(1) A Filing Office may refuse to accept a record for filing only for a reason set forth in Section 57.2.515(2).

(2) If a Filing Office refuses to accept a record for filing, it shall communicate the fact of and reason for its refusal to the person that presented the record. The communication must be made in writing within two weeks after the Filing Office receives the record.

(3) The Filing Office may not refuse to accept a written Financing Statement or Addendum Form utilizing an applicable tribal form except for a reason set forth in Section 57.2.515(2):

(4) The Filing Office may not refuse to accept a written Change From that utilizing an applicable tribal form except for a reason set forth in Section 57.2.515(2):

#### 57.2.522. Lapsed Financing Statements.

(1) The Filing Office may cause the files to reflect the fact that a financing statement has lapsed under Section 57.2.516(1) or has become ineffective under Section 57.2.511.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, immediately upon lapse the Filing Office may destroy any written record evidencing the financing statement. If the Filing Office destroys a written record evidencing a financing statement, it shall maintain another record of the financing statement which is recoverable by using the file number of the destroyed record.

#### 57.2.523. Information From Filing Office.

(1) If a person filing a written record furnishes a copy to the Filing Office, the Filing Office upon request shall note upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the person.

(2) The Filing Office shall communicate the following information to any person who requests it:

(a) whether there is on file on the date and time specified by the requesting party any financing statement that designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request, and has neither lapsed under Section 57.2.516(1) nor become ineffective under Section 57.2.511;

(b) the date and time of filing of each financing statement; and

(c) the information contained in each financing statement.

(3) In complying with its duty under Section 57.2.523(2), the Filing Office may communicate the information in any medium. However, if requested, the Filing Office shall communicate the information by issuing a written certificate.

#### 57.2.524. Assignment of Functions to Third Party.

The Tribal Department of Commerce, with approval by the Tribal Council, may contract with a third party to perform some or all of the functions of a Filing Office under this part, other than the adoption of rules under Section 57.2.526.

#### 57.2.525. Fees.

(1) The fee for filing and indexing a record under this part is \$20.00 if the record is communicated in writing on a standard form as set forth in Section 57.2.521. The fee for filing a written record in a form other than as set forth in Section 57.2.521, or if the record is communicated by another medium authorized by this Title is \$30.00. The fee for each additional name more than one required to be indexed is \$10.00 if provided on a standard form or \$15.00 if communicated on a substitute form or alternate authorized medium.

(2) The fee for responding to a request for information from the Filing Office, including marking a written copy to show the time and place of filing under provided under Section 57.2.523 or issuing a certificate showing whether there is on file any

financing statement naming a particular debtor, is \$10.00 if the request is communicated in writing and \$15.00 if the request is communicated by another medium authorized by this Title.

#### 57.2.526. Administrative Rules.

The Tribal Department of Commerce shall develop for consideration and approval by the Tribal Council rules to carry out the provisions of this Part. The rules must be adopted in accordance with the Tribal Legislative Procedures Act.

### PART 6. DEFAULT.

#### Sub-Part 1. Default and Enforcement of Security Interest.

#### 57.2.601. Default and Enforcement of Security Interest.

(1) When a debtor is in default under a security agreement:

(a) a secured party has the rights and remedies:

(i) provided in this Title;

(ii) provided in the security agreement so long as they comply with applicable laws; and

(iii) consistent with Part 5 of this Title.

(b) The secured party may reduce the claim to judgment, foreclose or otherwise enforce the security interest by legally available procedure.

(c) If the collateral is documents, the secured party may proceed either as to the documents or as to the goods covered thereby.

(d) A secured party in possession has the rights, remedies and duties provided in Section 57.2.207.

(e) The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies:

(a) as provided in this Title;

(b) as provided in the security agreement so long as they comply with recognized law; and

(c) as provided in Section 57.2.207.

(3) When a secured party has reduced the claim to judgment the lien of any levy which may be made upon the collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this part, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Title.

#### 57.2.602. Waiver and Variance of Rights and Duties.

(1) To the extent that they give rights to a debtor or an obligor and impose duties on a secured party, the rules stated in the sections referred to below may not be waived or varied by a debtor or by a consumer obligor, except as specifically provided in Section 57.2.622:

(a) Section 57.1.106, which deals with the territorial application of this title;

(b) Sections 57.2.609, 57.2.610, and 57.2.612, which deal with disposition of collateral;

(c) Sections 57.2.606 and 57.2.613 insofar as they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(d) Sections 57.2.606, 57.2.607, and 57.2.613 insofar as they require accounting for or payment of surplus proceeds of collateral;

(e) Sections 57.2.617, 57.2.618, or 57.2.619, which deal with acceptance of collateral in satisfaction of obligation;

(f) Section 57.2.620, which deals with redemption of collateral;

(g) Section 57.2.621, which deals with reinstatement of obligations;

(i) Sections 57.2.623, 57.2.624, and 57.2.627, which deal with the secured party's liability for failure to comply with this Part;

(j) Section 57.2.404(6)(c), which deals with an account debtor's right to ignore certain notifications; and

(k) Section 57.2.209, which deals with requests for an accounting, list of collateral, and statement of account.

(l) An obligor other than a consumer obligor may waive or vary the rules referred to in Section 57.2.602(1) to the extent and in the manner provided by other law.

#### 57.2.603. Agreement on Standards Concerning Rights and Duties.

The parties may determine by agreement the standards by which the fulfillment of the debtor's rights, obligor's rights and secured party's duties are to be measured provided the standards are not unreasonable.

#### 57.2.604. Procedure if Security Agreement Covers Real Property of Fixtures.

(1) If a security agreement covers both real and personal property, a secured party may proceed:

(a) under this part as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the real and the personal property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) If a security agreement covers goods that are or become fixtures, a secured party, subject to Section 57.2.604(3), may proceed under this part or in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) If a secured party with a security interest in fixtures has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the other provisions of this part, remove the collateral from the real estate. The secured party shall reimburse any encumbrancer or owner of the real estate that is not the debtor and that has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of the obligation to reimburse.

#### 57.2.605. Time of Default for Agricultural Lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the earlier of the time provided by agreement of the parties and the time at which the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

#### 57.2.606. Collection Rights of Secured Party.

(1) If so agreed in the security agreement and in any event upon default the secured party may by leave of the court:

(a) notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral; and

(b) take control of any proceeds to which the secured party is entitled under 57.2.313.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral, or is entitled to full or limited recourse against the debtor, and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner and must obtain leave of the tribal court when required.

(b) The secured party may deduct reasonable expenses of realization from the collections including reasonable attorney's fees and legal costs incurred by the secured party.

(c) If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides or a recognized court order so allows.

57.2.607. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(1) If a security interest or agricultural lien secures payment or performance of an obligation the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds (Section 57.2.313) of collection or enforcement under this section in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 57.2.607(1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds (Section 57.2.313) of collection and enforcement under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus notwithstanding any agreement to the contrary, and, unless otherwise agreed, the obligor is liable for any deficiency. Recovery of a deficiency under this subsection is subject to Section 57.2.624.

(2) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if its agreement so provides. Recovery of a deficiency under this subsection is subject to Section 57.2.624.

57.2.608. Secured Party's Right to Take Possession After Default.

(1) Unless otherwise agreed, a secured party has on default the right to take possession of the collateral. In taking possession a secured party must either obtain the consent of the debtor when the default occurs or obtain a judicial order of repossession. The secured party may ask that the debtor be required to assemble the collateral at a reasonably convenient location for both parties and make it available to the secured party.

(2) If the debtor consents at the time of default or the secured party obtains a judicial order of foreclosure, the secured party may take possession of the collateral and without removal may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 57.2.609.

57.2.609. Disposition of Collateral After Default.

(1) After default a secured party may sell, lease or otherwise dispose of any or all of the collateral in the then existing condition at the time of default or following any commercially reasonable preparation or processing of the collateral for disposal. Any sale of goods is subject to applicable law. The proceeds of disposition shall be applied in the following order:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must furnish reasonable proof of the subordinate interest, and unless so provided, the secured party need not comply with the subordinate interest's demand.

(2) (a) Disposition of the collateral may be by public or private proceedings and by way of one or more contracts.

(b) Sale or other disposition:

(i) may be as a unit or in parcels;

(ii) at any time and place;

(iii) on any terms; and

(iv) must be commercially reasonable.

(c) The secured party may buy the collateral at any public sale. If the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy the collateral at private sale for a commercially reasonable price.

57.2.610. Persons Entitled to Notification Before Disposition of Collateral.

(1) The notification date is the earlier of the date on which a secured party sends to the debtor and any secondary obligor written notification of a disposition and the date on which the debtor and any secondary obligor waive the right to notification.

(2) A secured party shall send to a debtor and any secondary obligor reasonable written notification of disposition under Section 57.2.612, unless collateral is perishable or threatens to rapidly decline in value or is of a type customarily sold on a recognized market. In the case of consumer goods, another notification need not be sent. In other cases a secured party shall send written notification of disposition to:

(a) any other person from whom the secured party has received, before the notification date, written notification of a claim of an interest in the collateral;

(b) any other secured party that, 30 days before the notification date, held a security interest or agricultural lien in the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date (Sections 57.2.301 through 57.2.307 and 57.2.501); and

(c) any other secured party that, 30 days before the notification date, held a security interest in the collateral perfected by compliance with a statute or treaty described in Section 57.2.309.

(3) A secured party complies with the notification requirement specified in Section 57.2.610(2)(b) if:

(a) not later than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Section 57.2.610(2)(b); and

(b) before the notification date, either the secured party did not receive a response to the request for information or the secured party received a response to the request for information and the secured party sent written notification to each secured party named in that response and whose financing statement covered the collateral.

57.2.611. Timeliness of Notification Before Disposition of Collateral.

(1) Notification of a disposition after default is sent within a reasonable time before disposition if sent:

(a) in a consumer secured transaction, 21 days or more before the earliest time of disposition set forth in the notification; or

(b) in other transactions, 10 days or more before the earliest time of disposition set forth in the notification.

(2) Notification that does not meet the applicable time requirements of Section 57.2.611(1) is presumed unreasonable. Rebuttal of this presumption is a question of fact.

57.2.612. Contents and Form of Notification Prior to Disposition of Collateral.

(1) Except in a consumer secured transaction, the following rules apply:

(a) Unless otherwise agreed, the contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness (Section 57.2.209) and states the charge, if any for an accounting; and

(v) states the time and place of a public sale or the time after which any other disposition is to be made, whether or not the notification contains additional information.

(b) Whether a notification that lacks any of the information set forth in Section 57.2.612(1)(a) is nevertheless sufficient is a question of fact in each case.

(c) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(d) Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

(2) In a consumer secured transaction, the following rules apply:

(a) A notification of disposition must contain the following information:

(i) the information specified in Section 57.2.613(1)(a);

(ii) a description of any liability for a deficiency of the person to which the notification is sent;

(iii) the amount that must be paid to the secured party to redeem the obligation secured under Section 57.2.620;

(iv) the amount that must be paid to the secured party to reinstate the obligation secured under Section 57.2.621; and

(v) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required. A notification



substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(c) Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

#### 57.2.613. Application of Proceeds of Disposition; Liability for Deficiency and Rights to Surplus.

(1) A secured party shall apply or pay over for application the cash proceeds (Section 57.2.313) of disposition in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 57.2.613(1)(a).

(3) A secured party need not apply or pay over for application noncash proceeds (Section 57.2.313) of disposition under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, the secured party shall account to and pay a debtor for any surplus, and, unless otherwise agreed, the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if its agreement so provides. Recovery of any deficiency under this subsection is subject to Section 57.2.624.

#### 57.2.614. Rights of Transferee of Collateral.

(1) When collateral is disposed of by a secured party after default to a purchaser for value, the disposition:

(a) transfers all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c) discharges any security interest or lien subordinate to which the disposition is made.

(2) The purchaser at disposal takes free of all rights and interests of the debtor, secured party or subordinate interests even though the secured party fails to comply with the requirements of this Section or of any judicial proceedings;

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

57.2.615. Rights and Duties of Certain Persons Liable to Secured Party.

(1) A person that is liable to a secured party under a guaranty, indorsement, repurchase agreement, or the like acquires the

rights and assumes the duties of the secured party if the person:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party.

(2) An assignment, transfer, or subrogation described Section 57.2.615(1) is not a disposition of collateral under this Part and does not relieve the secured party of its duties under this Part.

57.2.616. Transfer of Record or Legal Title.

(1) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office must accept the transfer statement, promptly amend its records to reflect the transfer, and, if applicable, issue a new appropriate certificate of title in the name of transferee.

(2) A transfer of the record or legal title to collateral to a secured party is not of itself a disposition of collateral under this Part and does not of itself relieve the secured party of its duties under this Part.

57.2.617. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.

(1) A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under 57.2.617(3);

(b) the secured party does not receive, within the time set forth in Section 57.2.617(4), a written notification of objection to the proposal from a person to whom the secured party was required to send a proposal under Section 57.2.618, or from any other person holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(c) in a consumer secured transaction in which collateral is of a type in which a security interest can be perfected by possession under Section 57.2.311, the collateral is in the possession of the secured party when the debtor consents to the acceptance.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless the secured party consents to the acceptance in a signed writing or sends written notification of a proposal to the debtor and the conditions of Section 57.2.617(1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a written notification of objection from the debtor within 20 days after the proposal is sent.

(4) To be effective under Section 57.2.617(1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to whom the proposal has been sent pursuant to Section 57.2.618, within 20 days after notification is sent to that person; and

(b) in other cases, within 20 days after the last notification is sent pursuant to 57.2.618 or, if a notification is not sent, before the debtor consents to the acceptance under Section 57.2.617(3).

(5) A secured party that has lawfully taken possession of collateral shall dispose of the collateral pursuant to Section 57.2.609 within 90 days after taking possession or within any extended period to which the secured party, the debtor and all secondary obligors have agreed in writing after default if:

(a) 60 percent of the cash price has been paid in the case of a purchase money security interest in consumer goods; or

(b) 60 percent of the principal amount of has been paid in the case of another security interest in consumer goods.

(6) In a consumer secured transaction, a secured party may accept collateral only in full satisfaction, and not in partial satisfaction, of the obligation it secures.

57.2.618. Notification of Proposal to Accept Collateral.

(1) Except in a consumer secured transaction, a secured party that wishes to accept collateral in full or partial satisfaction of the obligation it secures shall send written notification of its proposal also to:

(a) any secondary obligor;

(b) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral;

(c) any other secured party or lienholder that, 30 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date (Sections 57.2.301 through 57.2.307 and 57.2.501); and

(d) any other secured party or lienholder that, 30 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by compliance with a statute or treaty described in Section 57.2.309(3).

(2) In a consumer secured transaction, a secured party that wishes to accept collateral in satisfaction of the obligation it secures shall send written notification of its proposal to:

(a) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral; and

(b) any secondary obligor to the security agreement.

#### 57.2.619. Effect of Acceptance of Collateral.

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under 57.2.619(1) whether or not the secured party is required to send or does send notification to the holder thereof. However, any person to whom the secured party was required to send, but did not send, notification has the remedy provided by Section 57.2.623(2).

#### 57.2.620. Rights to Redeem Collateral.

At any time before a secured party has collected collateral under Section 57.2.606, disposed of collateral or entered into a contract for its disposition under Section 57.2.609, or accepted collateral in full or partial satisfaction of the obligation it secures under Section 57.2.617, the debtor, any secondary obligor, or any other secured party or lienholder may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the reasonable expenses and attorney's fees of the type described in Section 57.2.613(1)(a).

#### 57.2.621. Reinstatement of Obligation Secured Without Acceleration.

(1) If 60 percent of the cash price has been paid in the case of a purchase money security interest

in consumer goods or 60 percent of the principal amount of the obligation secured has been paid in the case of another consumer secured transaction, a debtor or a secondary obligor that is a consumer obligor may cure a default consisting only of the failure to make a required payment and may reinstate the secured obligation without acceleration by tendering the unpaid amount of the secured obligation due at the time of tender, without acceleration, including charges for delinquency, default, or

deferral, and reasonable expenses and attorney's fees of the type described in Section 57.2.613(1)(a).

(2) A tender of payment under Section 57.2.621(1) is ineffective to cure a default or reinstate a secured obligation unless made before the later of:

(a) 21 days after the secured party sends a notification of disposition under Section 57.2.610(2) to the debtor and any consumer obligor who is a secondary obligor; and

(b) the time the secured party disposes of collateral or enters into a contract for its disposition under Section 9-609 or accepts collateral in full satisfaction of the obligation it secures under Section 57.2.617.

(3) A tender of payment under Section 57.2.621(1) restores to the debtor and a consumer obligor who is a secondary obligor their respective rights as if the default had not occurred and all payments had been made when scheduled, including the debtor's right, if any, to possess the collateral. Promptly upon the tender, the secured party shall take all steps necessary to cause any judicial process affecting the collateral to be vacated and any pending action based on the default to be dismissed.

(4) A secured obligation may be reinstated under Section 57.2.621(1) only once, unless the parties have agreed otherwise.

(5) The debtor's rights under this subsection may not be waived by agreement.

#### 57.2.622. Waiver of Agreement by Debtor or Consumer Obligor.

(1) Subject to Section 57.2.622(3), a debtor or a consumer obligor may waive the right to notification of disposition of collateral under Section 57.2.610 or the right to redeem the collateral under Section 57.2.620 only by signing a statement to that effect after default.

(2) Subject to 57.2.622(3), a consumer obligor may waive the obligor's rights and the secured party's duties under Section 57.2.618 or 57.2.619 only by signing a statement to that effect after default.

(3) In a consumer secured transaction, a statement signed by the debtor or a consumer obligor is ineffective under Section 57.2.622(1) or (2) unless the secured party establishes by clear and affirmative evidence that the debtor or consumer obligor expressly agreed to its terms.

#### Sub-Part 2. Noncompliance With This Part.

##### 57.2.623. Remedies for Secured Party's Failure to Comply With This Part.

(1) If it is established that a secured party is not proceeding in accordance with this Part, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) A secured party is liable for damages in the amount of any loss caused by a failure to comply with this Part. Except as otherwise provided in Section 57.2.626, a person that, at the time of the failure, was a debtor, a secondary obligor, or held a security interest in or other lien on the collateral has a right to recover damages for its loss under this subsection.

(3) Except as otherwise provided in Section 57.2.626, in a consumer secured transaction, a person that was a debtor at the time a secured party failed to comply with this part has a right to recover from the noncomplying secured party an amount equal to the interest or finance charges plus 10 percent of the principal amount of the obligation, less the sum of any amount by which any consumer

obligor's personal liability for a deficiency is eliminated or reduced under Section 57.2.624 and any amount for which the secured party is liable under Section 57.2.623(2).

(4) If the secured party fails to dispose of the collateral within 90 days after legally taking possession, the debtor may recover in conversion or under Section 57.2.624 on the secured party's liability.

#### 57.2.624. Action in Which Deficiency or Surplus is at Issue.

In an action in which the amount of a deficiency or surplus is in issue the following rules apply:

(a) A secured party need not establish compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue, in which case the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the applicable provisions of this part.

(b) Except as otherwise provided in Section 57.2.626, if a secured party fails to meet the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance the following rules apply:

(i) in a consumer secured transaction for which no other collateral remains to secure the obligation, neither the debtor nor a secondary obligor is liable for a deficiency;

(ii) in other cases, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the actual proceeds of the collection, enforcement, disposition, or acceptance or the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance. However, the amount that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party meets the burden of establishing that the amount is less than that sum.

(iii) in a consumer secured transaction, any liability under Section 57.2.624(b)(ii) is not a personal liability of a consumer obligor but may be satisfied only by enforcing a security interest or other consensual

lien against property securing the obligation.

57.2.625. Determination of Whether Conduct Was Commercially Unreasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) It is a rebuttable presumption that disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market therefor;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A disposition which has been approved in any judicial proceeding and performed in accordance with such an order shall conclusively be deemed commercially reasonable.

57.2.626. Nonliability of Secured Party in Certain Circumstances; Liability of Secondary Obligor.

(1) Unless a secured party knows that a person is a debtor or a secondary obligor, knows the identity of the person, knows how to communicate with the person and has made a good faith effort to determine if there are or locate additional debtors or secondary obligors:

(a) the secured party is not liable to the person or to a secured party or lienholder that has filed a financing statement against the debtor for failure to comply with this Part; and

(b) the secured party's failure to comply with this Part does not affect the liability of the debtor or secondary obligor for a deficiency.

(2) A secured party is not liable to any person and a person's liability for a deficiency is not affected because of any act or omission, other than the failure to send a notification required by Section 57.2.610(2)(b), that occurs before the secured party knows that the person is a debtor or a secondary obligor or knows that the person has a security interest or other lien in the collateral.

(3) A secured party is not liable to any person and a person's liability for a deficiency is not affected because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer secured transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held, or an obligor's representation concerning the purpose for which a secured obligation was incurred.

57.2.627. Attorney's Fees in Consumer Secured Transactions.

If the secured party's compliance with this Part is placed in issue in an action with respect to a consumer secured transaction, the following rules apply:

(a) If the secured party would have been entitled to attorney's fees as the prevailing

party, the court shall award to a consumer debtor or consumer obligor prevailing on the issue the costs of the action and reasonable attorney's fees.

(b) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(c) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

#### PART 7. JUDICIAL PROCEDURE.

##### 57.2.701. One Action to Foreclose Security Interest.

(1) There can be one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a security interest on non-trust property situated or located on the Reservation which action must be in accordance with the procedures outlined herein.

(2) Notwithstanding the provisions above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance, installment(s) due or other charges which are to be paid by the mortgagor may be foreclosed, at the election of the encumbrance holder. The Court may by its judgment direct the sales of the encumbered property or of the equity of the defendants therein or so much thereof as may be necessary to satisfy the amount due. Such encumbrance shall otherwise remain valid and the holder thereof shall have the right to foreclose on the balance or any part thereof.

##### 57.2.702. Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property when the debtor is in default of a security agreement shall be commenced in Tribal Court.

(2) The creditor must file a complaint for repossession and in said complaint, the creditor must include a concise statement for the creditor's claim against the debtor. The debtor may file an answer to the creditor's complaint at any time prior to the hearing. At the hearing both creditor and debtor may present documentary evidence and witness to support their positions in the debt dispute. At the hearing, if the Judge determines that repossession is in fact justified, the Tribal Judge shall issue an order authorizing the creditor to repossess the personal property involved. Any such order shall direct that a creditor may repossess the property only when accompanied by a Tribal police officer.

(3) The Tribal Court shall direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses of such sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct entry of a judgment for such balance against the defendant or defendants.

(4) Sale of property under the Court's judgment shall be conducted in:

(a) a commercially reasonable manner if:

(i) the court does not issue instructions for the sale of the property; or

(ii) there is no tribal statute or regulation governing the sale of property:

(b) in accordance with any judicial decree if there is no governing tribal statute or



regulation governing the sale of the property.

(c) in all other situations, in accordance with applicable tribal statute or governing regulation.

#### 57.2.703. Right of Attachment.

(1) At the time of the issuance of a summons and complaint in a civil action, or at any time prior to final judgment, a creditor may file with the Clerk of the Tribal Court a request for a pre-judgment Order of Attachment. All requests for pre-judgment Order of Attachment shall be accompanied by an affidavit of the creditor which shall contain the following facts:

(a) that a debt is owed to the creditor by a debtor and the nature and specific amount of the debt;

(b) that the personal property being attached, which must be specifically identified as non-trust personal property belonging to the debtor; and

(c) that the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized or removed off the Reservation prior to payment of a final judgment and such loss, damage, vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

(2) If the Tribal Judge is satisfied after reviewing the complaint and affidavit, the judge may issue an Order of Attachment of the designated personal property. The Tribal police shall be given the Order of Attachment and the police shall seize any property identified by the order. Said property shall be kept in storage under the control of the tribal police. Said personal property shall be held by the police pending any further order of the Tribal Court.

(3) An Order of Attachment shall not be issued until the creditor has filed with the Clerk a surety bond or cash bond in the sum of at least \$1,000.00. Said bond shall be necessary in the event that the order of attachment was wrongfully issued and the debtor was damaged, or in the event the debtor prevails when final judgment is rendered.

(4) The debtor shall be served with the Order of Attachment at the time the Tribal Police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's house, mobile home or residence and a copy mailed to the debtor's last known address. The service shall be documented for court records.

(5) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that writ. The debtor may contest the Writ of Attachment by filing a Response to Writ of Attachment. At the time that the Response is filed with the Clerk of the Tribal Court, the Court shall set a hearing date and notice of said hearing shall be served on the creditor at least five days before that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

(a) (i) the specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed off the Reservation prior to final judgment; or

(ii) that said loss, damage, vandalism or removal of property would not result in hindering the ability of the creditor to collect on a judgment if

one should subsequently be obtained;

(b) that no debt is owed to the creditor; or

(c) that the property sought to be attached is exempt under this Part or is trust property.

(6) If the court determines that the pre-judgment writ of attachment was wrongfully issued, the court may impose a fine up to \$500.00 and order payment of the other party's attorney fees and costs.

#### 57.2.704. Conduct of Sale.

(1) All sales of property under decrees of repossession and orders for sale conducted by the Tribal Police must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of Court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several lots or parcels, they may be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third persons claims an interest in part of the property to be sold, that party may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid for property sold to the bidder at sale, the officer conducting the sale may again sell the property to the highest bidder and if any less be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in the officer's discretion, thereafter reject any subsequent bid of such person.

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57.2.705. Return on Sale.

(a) The name and address of the highest bidder;

- (b) the successful bid price;
- (c) the date and time of sale;
- (d) the name of the officer conducting the sale;
- (e) any other relevant information.

(2) A certified copy of such return together with a certified copy of the Court's order directing the sale shall be filed by the purchaser in the tribal filing records under the name of the original debtor.

#### C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

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MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST: \_\_\_\_\_

DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

[return](#)